

ENERGETICS, INC.

IBLA 80-290

Decided February 3, 1981

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease. W-24170.

Affirmed.

1. Oil and Gas Leases: Reinstatement--Oil and Gas Leases: Termination

An oil and gas lease, terminated by operation of law for failure to timely pay the annual rental, will not be reinstated where the lessee mailed the rental payment to the wrong Bureau of Land Management office, where that office returned the payment in sufficient time for lessee to make timely payment in the proper office, but where the lessee failed to do so.

APPEARANCES: Linda K. Naish, Land Department, Energetics, Inc., for appellant.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Energetics, Inc., has appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated December 12, 1979, denying its petition for reinstatement of oil and gas lease W-24170, which terminated by operation of law because of appellant's failure to pay the annual rental on or before the anniversary date of the lease, as required by 30 U.S.C. § 188(b) (1976) and 43 CFR 3108.2-1(a).

The record in this case discloses the following facts. The Wyoming State Office mailed a courtesy notice which was received by appellant on September 26, 1979. The notice indicated that the annual rental for oil and gas lease W-24170 was due November 1, 1979, and the

notice stated, "Return This Notice With Remittance To: Bureau of Land Management, P.O. Box 1828, Cheyenne, WY. 82001." The Montana State Office received appellant's check, dated October 1, 1979, for the annual rental of lease W-24170 on October 18, 1979. The Montana State Office immediately returned the check. Appellant received it on October 22, 1979. Appellant forwarded the rental payment to the Wyoming State Office in an envelope postmarked November 6, 1979. It was received on November 8, 1979.

In a termination notice dated November 14, 1979, BLM informed appellant that the lease had terminated by operation of law for failure to pay the annual rental in a timely manner. On November 26, 1979, appellant filed a petition for reinstatement with the State Office claiming that although the check was originally inadvertently misdirected to the wrong BLM office, "failure to get said rental to the correct BLM office was not due to a lack of reasonable diligence." By decision dated December 12, 1979, the Wyoming State Office denied the petition for reinstatement.

On appeal appellant states that following receipt of its misdirected payment, "the rental check was immediately sent to the correct office." Appellant contends that the failure to make timely payment was due to "the time lapse between the Montana BLM's receipt of referenced payment and their return of same to our office." Appellant also argues that it is being unjustly penalized and that the untimely payment was "due to Montana's slow handling, the U.S. Postal Service, or to poor mail service within our own building."

[1] Where a lease terminates by operation of law for failure to timely pay the annual rental, the Department may reinstate the lease only where it is shown that the failure to pay the rental timely was either justifiable or not due to a lack of reasonable diligence. 30 U.S.C. § 188(c) (1976). A rental check does not constitute payment unless it is received at the proper office. 43 CFR 3103.1-2(a). Mailing a rental check to the wrong BLM office precludes a finding of reasonable diligence. Gretchen Capital Ltd., 37 IBLA 392 (1978). Late payment of rental is justifiable only where the failure to make timely payment is the result of causes beyond the control of the lessee and simple inadvertence in mailing the payment to the wrong office does not justify failure to send timely payment to the proper office. Id.

Appellant would have us believe that the untimely payment resulted from causes beyond its control. However, there is no evidence that BLM prejudiced appellant's opportunity to make timely filing in the proper office. To the contrary, appellant's misdirected check was immediately returned by the Montana State Office and received by appellant on

October 22, 1979. 1/ Appellant had sufficient time to mail the check to the Wyoming State Office to meet the November 1 due date. While appellant asserts that it "immediately" sent the check to the Wyoming State Office, it is obvious from the record that the mailing was not immediate. Appellant does not explain why the check was not posted until November 6, other than to intimate that there might have been "poor mail service within our building."

Appellant has presented no justifiable reason for reinstating the lease. BLM properly denied reinstatement.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Bruce R. Harris

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Administrative Judge

We concur:

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Douglas E. Henriques  
Administrative Judge

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Anne Poindexter Lewis  
Administrative Judge

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1/ In this respect the facts of this case differ from those in Richard L. Rosenthal, 45 IBLA 146 (1980). In Rosenthal a petition for reinstatement was granted because even though the lessee misdirected the rental payment to the wrong BLM office, the negligence of BLM employees was an equally causative factor in the lessee's failure to timely pay the rental.

